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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,695

01/23/2006

Egbert Classen

2003P00992WOUS

2665

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03/16/2009

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EXAMINER

LU, JIPING

ART UNIT

PAPER NUMBER

3743

MAIL DATE

DELIVERY MODE

03/16/2009

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte EGBERT CLASSEN, HELMUT JERG,
and KAI PAINTNER

Appeal 2009-1076
Application 10/565,695
Technology Center 3700

Decided:¹ March 16, 2009

Before TONI R. SCHEINER, LORA M. GREEN, and
JEFFREY N. FREDMAN, *Administrative Patent Judges*.

SCHEINER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 7-13, all the claims pending. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The claims are directed to “a method for operating an appliance comprising at least one sub-program step ‘drying’, such as is applied for example in laundry driers, [and] dishwashers” (Spec. 1: 4-7).

Claim 7 is representative of the claims on appeal:

7. A method for operating a household appliance, comprising:
subjecting items retained in the appliance to a drying step after the items have undergone a treatment step as a result of which moisture remains on the items, the step of drying including conducting air from a treatment chamber via a conduit system in which both ends of at least one heat pipe protrude, thereafter conducting the air through the at least one heat pipe, and recirculating the air back to the treatment chamber, whereupon, during the passage of the air between its exit of the treatment chamber and its recirculation to the treatment chamber, the air is cooled, moisture is removed from the air, and the air is subsequently reheated with no outside air being introduced into the treatment chamber and the conduit system.

The Examiner relies on the following evidence:

Dinh	US 5,343,632	Sep. 6, 1994
Okamoto et al. (English translation)	JP 53-036067	Apr. 4, 1978

The following ground(s) of rejection are before us for review:

Claims 7-13 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This is a new matter rejection.²

² The Specification has also been objected to under 35 U.S.C. § 132(a) for subject matter added by the Amendment of May 1, 2007. To the extent the subject matter objected to does not coincide with the new matter cited in the rejection of the claims, the objection is not reviewable by the Board, but is subject to supervisory review by petition under 37 C.F.R. § 1.181.

Claims 7-13 stand rejected under 35 U.S.C. § 102(b) as anticipated by Dinh.

Claims 7-12 stand rejected under 35 U.S.C. § 102(b) as anticipated by Okamoto.

Appellants do not present separate arguments for the claims, therefore, the claims subject to each rejection will stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii) (2006).

We reverse the new matter rejection, but affirm the prior art rejections.

NEW MATTER

The Issue

Has the Examiner established that the recitation “no outside air being introduced into the treatment chamber and the conduit system” in claim 7 is new matter not supported by the original disclosure?

Findings of Fact

FF1 The Specification teaches that the subject method “for operating an appliance comprising least one sub-program step ‘drying’, during the at least one sub-program step ‘drying’” (Spec. 3: 7-10) is a “closed air system” (*id.* at 3: 27-28), in which “any exchange of contaminated air from the surroundings is completely eliminated” (*id.* at 3: 28-29). The Specification teaches that:

[A]ir is conducted from a treatment chamber via a conduit system into which both ends of at least one heat pipe protrude and said air is then recirculated to this chamber, wherein during its passage through said conduit system the air is cooled, moisture is removed and the air is subsequently reheated.

(*id.* at 3: 10-15.)

FF2 The phrase “no outside air being introduced into the treatment chamber and the conduit system” concludes the clause of claim 7 that sets forth the details of “the step of drying” (claim 7).

Principles of Law

To satisfy the written description requirement, the Specification need not contain the identical words used in the claims. *See Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000) (“[T]he disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue.”). The written description requirement is satisfied if the disclosure conveys with reasonable clarity to those skilled in the art that the inventor was in possession of the invention. *See id.*

Analysis

The Examiner asserts that the phrase “no outside air being introduced into the treatment chamber and the conduit system” is new matter because Appellants “never define what ‘outside air’ is” (Ans. 6), and Appellants’ “device does not perform a closed air system when the dryer door is at open position” (*id.*).

Nevertheless, we find that the Specification, as originally filed, reasonably conveys to the skilled artisan that no outside air is introduced into the treatment chamber or the conduit system during operation of the household appliance, in particular, during the drying step, given the teaching in the Specification that “exchange of . . . air from the surroundings is completely eliminated” (**FF1**) “during the at least one sub-program step ‘drying’” (*id.*). Moreover, it is irrelevant whether outside air is introduced when the dryer door is open, because the claim merely requires that no

outside air is introduced into the treatment chamber and the conduit system during the drying step (**FF2**).

Conclusions of Law

The Examiner has not established that the recitation “no outside air being introduced into the treatment chamber and the conduit system” in claim 7 is new matter.

ANTICIPATION: DINH

Issue

Have Appellants established that the Examiner erred in finding that Dinh describes the method of claims 7-13?

Findings of Fact

FF3 The Examiner finds that:

Dinh shows a method for operating an appliance 230 comprising subjecting the items 244 . . . to a drying step, conducting air (by fan 238) from a treatment chamber 234 via a conduit system 250 in which both ends of at least one heat pipe 252 protrude, conducting the air through the at least one heat pipe 252, recirculating the air back to the treatment chamber 234, during the passage of the air between its exit 248 of the treatment chamber and its recirculation to the treatment chamber 234, the air is cooled by condenser 260, moisture is removed from the air (via drain 258) and the air is subsequently reheated by heater 242 with no outside air being introduced into the treatment chamber and the conduit system[.]

(Ans. 4.)

FF4 Appellants do not dispute the Examiner’s findings set forth immediately above.

FF5 Dinh further teaches that the drying system “can be retrofitted into any existing residential dryer, or could be incorporated into new dryers.

In addition, the system could be easily modified to operate during the drying cycle of a dishwasher” (Dinh, col. 8, ll. 6-10).

Analysis

Appellants do not dispute the Examiner’s findings regarding the steps of Dinh’s method (**FF3, 4**). Rather, Appellants contend that Dinh “does not relate to a household appliance but, instead, relates to an industrial drying system . . . [and] one of ordinary skill in the art would not refer to the Dinh reference for a solution for a household appliance” (App. Br. 5).

However, as the Examiner points out (Ans. 4), Dinh explicitly states that the system is can be used in residential (i.e., household) dryers and dishwashers (**FF5**).

Conclusions of Law

Appellants have not established that the Examiner erred in finding that Dinh describes method of claims 7-13.

ANTICIPATION: OKAMOTO

Issue

Have Appellants established that the Examiner erred in finding that Okamoto describes the method of claims 7-12?

Findings of Fact

FF6 Okamoto describes an “airtight” clothes dryer that does “not releas[e] . . . moist air to the outside of the dryer” (Okamoto translation 3), as opposed to previously existing clothes dryers in which “air is supplied from outside of the dryer . . . [and] heated [moist] air is released outside of the dryer” (*id.* at 2). Okamoto teaches that, unlike the previously existing clothes dryers in which “the drying time was greatly affected by the temperature of

the air drawn in and the humidity” (*id.* at 8), the drying time of the airtight dryer “has nothing to do with the temperature and humidity of the open air” (*id.*), since moisture is continually condensed out of the air in the airtight system, and the air is reheated and recirculated through the dryer.

FF7 The Examiner finds that:

Okamoto et al. show a method for operating an appliance (see Fig. 1) comprising subjecting the items A retained in the appliance to a drying step, conducting air (by fan 8) from a treatment chamber 1 via a conduit system 6, 7, 12, 11, 14 in which both ends of at least one heat pipe 19 protrude, conducting the air through the at least one heat pipe 19, recirculating the air back to the treatment chamber 1, during the passage of the air between its exit 5 of the treatment chamber 1 and its recirculation to the treatment chamber 1, the air is cooled by condenser 23, moisture is removed from the air (via drain 36) and the air is subsequently reheated by heater 14 with no outside air being introduced into the treatment chamber and the conduit system[.]

(Ans. 4-5.)

FF8 Figure 1 of Okamoto is reproduced below:

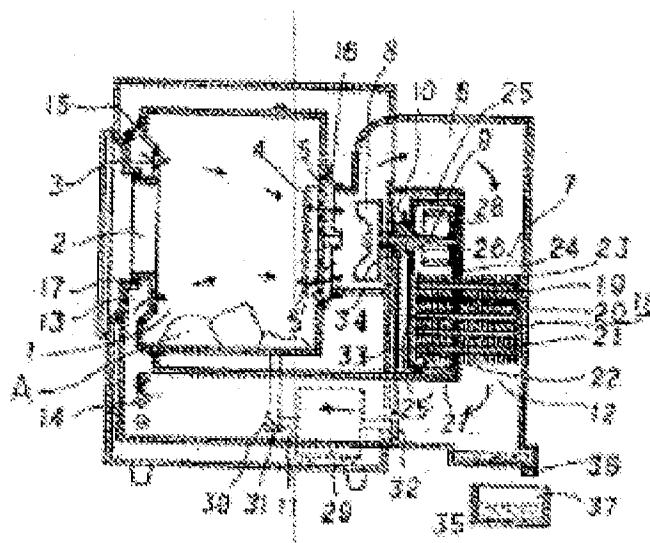


Figure 1 depicts “a cross section of the side of the clothes dryer” (Okamoto translation 9).

FF9 According to Okamoto, “sealing material 15 is provided so as to link the opening 13 with the air inlet 3” (Okamoto translation 3).

FF10 The Examiner finds that sealing material 15 is part of closed “conduit system 6, 7, 12, 11, 14, 13, 1, 6. . . [in which] recirculated air is introduced into the treatment chamber via multiple air inlets 3” and “[t]he path shows no outside air is being introduced into the treatment chamber 1 and the conduit system” (Ans. 7).

FF11 Based on a review of Okamoto’s Figure 1, we agree with the Examiner’s finding that sealing material 15 is an element of the circulating air path, which does not receive outside air when the dryer is in operation.

Analysis

Appellants contend that Okamoto “appears to introduce outside air via an inlet 15 and thus . . . does not disclose a method such as recited in claim 7 in which no outside air is introduced into the treatment chamber and the conduit system” (App. Br. 6).

However, we agree with the Examiner’s finding that sealing material 15 is part of the closed conduit system through which the air is recirculated in Okamoto’s dryer (**FF10, 11**). Appellants have not explained how seal 15 admits outside air into Okamoto’s “airtight” dryer while it is operating.

Conclusions of Law

Appellants have not established that the Examiner erred in finding that Okamoto describes the method of claims 7-12.

SUMMARY

The rejection of claims 7-13 under 35 U.S.C. § 112, first paragraph, as containing new matter is reversed.

The rejection of claims 7-13 under 35 U.S.C. § 102(b) as anticipated by Dinh is affirmed.

The rejection of claims 7-12 under 35 U.S.C. § 102(b) as anticipated by Okamoto is affirmed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

LP

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